ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CA07-1167

March 12, 2008

LATASHA R. ROE
APPELLANT
v.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
APPELLEE

AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT
[No. JJN-05-1144]

HONORABLE RITA W. GRUBER, JUDGE

AFFIRMED; MOTION TO WITHDRAW GRANTED

This appeal is brought by Latasha Roe, whose parental rights as the mother of A.R., born on March 16, 1995, and S.R., born on September 9, 2003, were terminated. Counsel for Ms. Roe has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 4-3-(j)(1). Counsel's motion was accompanied by a brief stating that no adverse ruling was made at the termination hearing and explaining why there is no meritorious ground for reversal. It included a discussion of the sufficiency of the evidence to support the termination order. Appellant's counsel has abstracted the testimony and included in the addendum all exhibits from the termination hearing.

The clerk of this court sent copies of Ms. Roe's attorney's brief and the motion to be relieved to Ms. Roe, informing her that she had the right to file pro se points for reversal. She filed a letter containing the following pro se points:

(1) There was some "false information and misrepresentation";

(2) DHS made many mistakes;

(3) Her attorney did not provide adequate representation;

(4) She should not have been forced to go straight to juvenile court when she was released from jail;

(5) She did everything she was supposed to do;

(6) Her lawyer talked to the other lawyers behind her back;

(7) She did not receive the help she needed.

Appellant provides no factual support for these assertions. With the exception of her sufficiency argument, she did not raise these points to the trial court. In fact, her attorney conceded at trial that DHS had made reasonable efforts overall. It is settled law that we do not reach arguments in termination cases that were not raised to the trial court. *Moore v. Ark. Dep't of Human Servs.*, 95 Ark. App. 138, 234 S.W.3d 883 (2006). Nevertheless, even if she had raised all of these arguments below, we would not reverse. Our review of the record clearly shows that DHS provided appellant with reasonable reunification efforts and that she did not do everything that was required of her to avoid termination.

The court entered an ex parte order for emergency custody of the children on May 31, 2005. In July 2005, the court adjudicated the children dependent-neglected on the grounds of appellant's inadequate supervision and substance abuse. Reunification services (drug

treatment, family counseling, visitation, and transportation) were offered to appellant. DHS later sought termination of appellant's parental rights, but the hearing scheduled for July 26, 2006, was continued at DHS's request to give appellant more time. DHS withdrew that petition for termination. In January 2007, the trial court ruled that appellant could work toward an overnight, unsupervised visit with A.R. if A.R.'s therapist recommended it. Appellant was given a three-day visit with A.R. in March 2007. Appellant, however, failed to adequately supervise A.R., and A.R. had sex with a boy at a relative's house during this visit.

In April 2007, the court entered an order changing the goal of the case to termination and set a hearing for July 11, 2007. DHS filed a petition for termination on the grounds that the children had been out of appellant's custody for twelve months and, despite a meaningful effort by the department to rehabilitate her and correct the conditions that caused removal, the conditions had not been remedied.

At the hearing, Connie Collier, a counselor who worked with A.R. in residential treatment at the Centers for Youth and Families, testified that appellant came to only two family-therapy sessions; even though she had made every effort to work with appellant and to arrange her schedule for appellant's convenience, appellant missed ten or eleven sessions. She said that, before A.R. left with appellant on the three-day pass, she made it clear to appellant and A.R. that appellant was to supervise A.R. at all times and that A.R. was not to spend the night with anyone else. Ms. Collier stated that, when A.R. returned from the weekend pass, she asked for a pregnancy test and revealed that she had had sex with a boy when appellant had allowed her to stay at a relative's house. Ms. Collier testified that appellant

failed to return for family therapy, even though she urged her to come in for an "important" session to discuss this incident. She stated that, based on what happened during the weekend pass, the number of chances appellant was given, and appellant's lack of interest in this case, she thought that appellant's parental rights should be terminated.

DHS presented evidence that appellant was insufficiently involved in this case; that she usually had an excuse for not participating; that her progress was inconsistent; that, even after outpatient treatment, she tested positive on some drug screens; that her employment was sporadic; that, although she had an apartment at Shorter Gardens, she had problems obtaining furnishings; and that she had not consistently visited with her children. An adoption specialist with DHS testified that the children were adoptable and that there were thirty families matched to adopt them together. The guardian ad litem also recommended that appellant's parental rights be terminated as to both children.

Appellant admitted that she went to only two counseling sessions and that she had not seen S.R. since February or March 2007. She also admitted allowing A.R. to spend the night with a relative during the weekend pass in March 2007. She justified her failure to attend visitation with A.R. by stating that she had not known about the visits and that she had problems with her work schedule and transportation. She testified that she had completed anger-management classes and drug-and-alcohol counseling; that she had lived at the same apartment for about a year; and that she had held a full-time job for about six months.

On August 20, 2007, the circuit court entered the following findings of fact and conclusions of law:

> [T]his Court finds that she has not consistently followed Court orders. Ms. Roe claims to have done everything that has been asked of her, but she never provides proof of employment, counseling, or negative drug screens to bolster her claim. Her employment and housing have been sporadic, and her visitation with the girls has been rare indeed. The Court gave her the benefit of the doubt when the first termination petition was filed, and Ms. Roe has had ample time since then to stabilize her life. The Court specifically finds that these children would experience harm from contact with Ms. Roe because of her sporadic interest in her children and general unwillingness to admit that she has mistakes or shortcomings. The incident involving the weekend pass with [A.R.] was a serious mistake, that could have had more dire consequences, and this incident occurred because Ms. Roe did not follow the rules of the pass and let her daughter do as she pleased because it suited Ms. Roe's own needs and conveniences. Her presence in [A.R.'s] life has been minimal since she entered care, and she has maintained contact with [S.R.] even less than that. These children are young and adoptable, and they should not be required to further languish in foster care. The juveniles deserve permanency that Ms. Roe could not provide in the two years they have been in foster care, nor could she provide it in the foreseeable future, if ever. The Department has an appropriate permanency plan for the children, and their needs are being met in foster care.
>
> Therefore, based on the entirety of the evidence, and the circumstances surrounding the removal of the children, the Court finds by clear and convincing evidence that it is in the children's best interests, and necessary to their health, safety and well-being, to terminate the parental rights of Latasha Renee Roe . . . .

Appellant's attorney then filed this appeal.

The standard of review in cases involving the termination of parental rights is well established. Arkansas Code Annotated section 9-27-341(b)(3) (Repl. 2008) requires an order terminating parental rights to be based upon clear and convincing evidence. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *E.g.*, *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005). When the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the trial court's

finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *Id*. Such cases are reviewed de novo on appeal. *Wade v. Ark. Dep't of Human Servs.*, 337 Ark. 353, 990 S.W.2d 509 (1999). However, appellate courts give a high degree of deference to the trial court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Ullom v. Ark. Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000). Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. *Id*. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Crawford v. Ark. Dep't of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997).

Arkansas Code Annotated section 9-27-341(b) (Repl. 2008) provides in pertinent part as follows:

> (3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:
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> > (A) That it is in the best interest of the juvenile, including consideration of the following factors:
> >
> > > (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and
> > >
> > > (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and
> >
> > (B) Of one (1) or more of the following grounds:

> (i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.
>
> . . . .
>
> (ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

We hold that there was clear and convincing evidence to support the termination of appellant's parental rights. Appellant lost custody of her children because of her drug use and her failure to supervise them. We recognize that she did attempt to change her behavior after the children were taken into DHS's custody. She tested negative for drugs at least twenty-two times (out of twenty-four); she eventually completed drug treatment; she kept a job for six months; and she stayed in the same apartment for a year. Nevertheless, the record demonstrates that she made little effort to maintain meaningful contact with the children; she rarely visited them and stopped participating in family therapy after attending only two sessions. When she finally was permitted to have A.R. with her for a three-day visit, twenty-one months after DHS took custody, she used extremely bad judgment in allowing A.R. to spend the night at a relative's house, even though she was warned not to do so. The fact that A.R., who was barely twelve, took this opportunity to have sex with a boy perfectly illustrates the danger into which appellant's inability or unwillingness to supervise her children placed them. This incident also showed that appellant had not corrected at least one of the reasons why she lost custody.

Accordingly, we affirm the termination of appellant's parental rights and grant her counsel's motion to withdraw.

Affirmed.

GLADWIN and GLOVER, JJ., agree.